

**WAGANAKISING ODAWAK STATUTE #**  
**AMENDMENT TO WOS 2008-007**  
**DISSOLUTION OF MARRIAGE**

**SECTION I. REPEAL and REPLACE**

**A. REPEAL:**

**SECTION VIII. CHILD CUSTODY, VISITATION AND SUPPORT**

**1.** In any action for divorce, the Court shall have the authority to determine the custody of any children under eighteen (18) years of age. The Court shall have jurisdiction to award custody of the minor children of the marriage to one of the parties or to a third person.

**2.** The Court may grant custody to one (1) parent, or may grant joint custody. The court shall specify the period(s) when each parent shall have custody and shall determine the visitation rights (if any) of the non-custodial parent. The Court shall determine custody in accordance with the best interest of the child and shall consider all relevant factors including:

- a)** the wishes of the child(ren)'s parent or parents as to the custody;
- b)** the wishes of the child(ren) as to custody, provided that the child(ren) are of sufficient age to exercise discretion. These wishes may be weighed by the Court, but are not controlling to the Court's decision. The Judge will meet with the child(ren) in his or her chambers to discuss the child(ren)'s wishes;
- c)** the interaction and interrelationship of the child with his or her parent or parents, siblings and any other person who may significantly affect the child's best interest;
- d)** the child's adjustment to his or her home, school and the tribal community;
- e)** the mental and physical health of all individuals involved;

1                   **f)**       the capacity and disposition of the custodian parent to allow the  
2                   child frequent and continuing contact with the non-custodial parent(s) and  
3                   the child(ren) whenever possible.  
4

5           **3.**       The Court shall not consider conduct of a proposed custodian that does not  
6           affect his or her relationship to the child.  
7

8           **4.**       The Court shall have no presumption that one parent is better suited to be  
9           a custodian because of gender.  
10

11          **5.**       Differences in financial circumstances alone shall not be a deciding factor  
12          in the determination of custody.  
13

14          **6.**       The Court shall have the authority to require the non-custodial parent to  
15          pay such sum as the Court may determine appropriate and proper for the support  
16          and maintenance of the child(ren).  
17

18          **7.**       The Court shall designate visitation for the non-custodian parent or  
19          parent(s) and shall provide for the foster and expansion of the relationship  
20          between the non-custodial parent(s) and the child(ren) whenever possible, unless  
21          the Court finds, after a hearing, that visitation would endanger seriously the  
22          child's physical, mental or emotional health.  
23

24          **8.**       The Court, upon petition of either party, or any third party to whom  
25          custody or visitation of the minor child(ren) may be awarded, may revise, amend  
26          or alter any order concerning the care, custody, support or visitation rights with  
27          any minor child(ren) consistent with the best interests of the child or children.  
28

29          **9.**       Changes in domicile where the custodial parent wants to move out-side of  
30          the Tribal Territorial Jurisdiction, shall require prior Court approval. The Court  
31          shall consider the following factors:

32               **a)**       consent of both parents;

33               **b)**       prospective advantages of the move for improvement of the  
34               general quality of life for the custodial parent and child(ren);

- 1                   c)       the likelihood of the custodial parent complying with the Tribal  
2                   Court Order once he or she in no longer resides within the Tribal  
3                   Territory;  
4                   d)       the extent to which there will be a realistic opportunity for non-  
5                   custodial visitation which can continued to foster the relationship between  
6                   the non-custodial parent(s) and the child(ren).

7  
8       **10.**     Both custodial and non-custodial parents shall notify the Court of any  
9       changes in domicile or residency.

10  
11       **11.**     When the Court has ordered periodic support payments under this code,  
12       and the parent does not pay as ordered, the Court shall use the same methods to  
13       collect these payments as it would to enforce any money judgment in a civil  
14       action, including contempt.

15  
16   **REPLACE:**

17  
18       **SECTION VIII.     CHILD CUSTODY, VISITATION AND SUPPORT**

19  
20       **A.**     In any action for divorce, the Court shall have the authority to determine  
21       the custody of any child less than eighteen (18) years of age. Custody is the care,  
22       control and maintenance of a child which includes legal and physical custody.

23  
24               **1.**     Legal custody is the decision making authority.

25  
26               **2.**     Physical custody is the caregiving authority.

27  
28       **B.**     The Court shall have jurisdiction to award custody of a minor child to one  
29       of the parents, or both of the parents.

30  
31       **C.**     The court must order joint physical custody of a child to both parents unless the  
32       court determines that joint physical custody is not in the best interests of the child as set  
33       forth in this Statute.

1       **D.**     A person who is giving legal custody may make important life decisions  
2       for a child, such as health care, education, child care and general welfare.

3  
4           **1.**     Joint legal custody gives both parents the right to make these  
5       decisions.

6  
7           **2.**     Sole legal custody gives one parent all decision-making  
8       responsibilities.

9  
10       **E.**     A person who is giving physical custody has actual physical residency of a  
11       child.

12  
13           **1.**     Joint physical custody means that each parent will have specific times  
14       with a child.

15  
16           **2.**     Sole physical custody means that one parent provides for the day-to-day  
17       care for the child and the non-custodial parent may be given parenting time.

18  
19       **F.**     In determining the best interest of the child, the Court shall consider all relevant  
20       factors including:

21  
22           **1.**     The love, affection, and other emotional ties existing between the  
23       parent involved and the child.

24  
25           **2.**     The capacity and disposition of the parent to give the child love,  
26       affection, and guidance and to continue the child's education.

27  
28           **3.**     The capacity and disposition of a parent, for reasons other than  
29       poverty, to provide adequate food, clothing, shelter, medical care,  
30       education, or supervision necessary for the child's health and well-being.

31  
32           **4.**     The ability of a parent to provide a stable and satisfactory  
33       environment for the child.

- 1
- 2           **5.**     The mental and physical health of the parent.
- 3
- 4           **6.**     The home, school, and community record of the child.
- 5
- 6           **7.**     The wishes of the child may be weighed by the Court, but are not
- 7           controlling to the Court's decision. The Judge will meet with the child in
- 8           his or her chambers to discuss the child's wishes.
- 9
- 10          **8.**     The interaction and interrelationship of the child with siblings and
- 11          any other person who may significantly affect the child's best interest.
- 12
- 13          **9.**     The willingness and ability of each of the parent to facilitate and
- 14          encourage a close and continuing parent-child relationship between the
- 15          child and the other parent.
- 16
- 17          **10.**    Domestic violence, regardless of whether the violence was directed
- 18          against or witnessed by the child.
- 19
- 20          **11.**    Any other factor considered by the court to be relevant to a
- 21          particular child custody dispute.
- 22
- 23          **G.**     The Court shall not consider conduct of a proposed custodian that does not
- 24          affect his or her relationship to the child.
- 25
- 26          **H.**     The Court shall have no presumption that one parent is better suited to be
- 27          a custodian because of gender.
- 28
- 29          **I.**     Differences in financial circumstances alone shall not be a deciding factor
- 30          in the determination of custody.
- 31

1       **J.**       The Court shall have the authority to require the non-custodial parent to  
2 pay such sum as the Court may determine appropriate and proper for the support  
3 and maintenance of the child.  
4

5       **K.**       The Court shall designate visitation for the non-custodian parent or  
6 parent(s) and shall provide for the foster and expansion of the relationship  
7 between the non-custodial parent(s) and the child whenever possible, unless the  
8 Court finds, after a hearing, that visitation would endanger seriously the child's  
9 physical, mental or emotional health.  
10

11       **L.**       The Court, upon petition of either parent to whom custody or visitation of  
12 the minor child may be awarded, may revise, amend or alter any order concerning  
13 the care, custody, support or visitation rights with any child consistent with the  
14 best interests of the child.  
15

16       **M.**       Changes in domicile where the custodial parent wants to move out-side of  
17 the Tribal Territorial Jurisdiction, shall require prior Court approval. The Court  
18 shall consider the following factors:  
19

- 20           **1.**       Consent of both parents.
- 21
- 22           **2.**       Prospective advantages of the move for improvement of the  
23 general quality of life for the custodial parent and child.  
24
- 25           **3.**       The likelihood of the custodial parent complying with the Tribal  
26 Court Order once he or she is no longer resides within the Tribal Territory.  
27
- 28           **4.**       The extent to which there will be a realistic opportunity for non-  
29 custodial visitation which can continued to foster the relationship between  
30 the non-custodial parent(s) and the child.  
31

32       **N.**       Both custodial and non-custodial parents shall notify the Court of any  
33 changes in domicile or residency.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

**O.** When the Court has ordered periodic support payments under this code, and the parent does not pay as ordered, the Court shall use the same methods to collect these payments as it would to enforce any money judgment in a civil action, including contempt.

**SECTION II. EFFECTIVE DATE**

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval which ever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

**CERTIFICATION**